

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE ENROLLED ACT No. 1445

AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 31-9-2-35.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 1999]: **Sec. 35.5. "De facto custodian", for purposes of IC 31-14-13 and IC 31-17-2, means a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for at least:**

**(1) six (6) months if the child is less than three (3) years of age; or**

**(2) one (1) year if the child is at least three (3) years of age.**

**Any period after a child custody proceeding has been commenced may not be included in determining whether the child has resided with the person for the required minimum period. The term does not include a person providing care for a child in a foster family home (as defined in IC 12-7-2-90).**

SECTION 2. IC 31-14-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The court shall determine custody in accordance with the best interests of the child. In determining the child's best interests, there is not a presumption favoring either parent. The court shall consider all relevant factors,

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including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parents;
  - (B) the child's siblings; and
  - (C) any other person who may significantly affect the child's best interest.
- (5) The child's adjustment to home, school, and community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 2.5(b) of this chapter.**

SECTION 3. IC 31-14-13-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.**

**(b) In addition to the factors listed in section 2 of this chapter, the court shall consider the following factors in determining custody:**

- (1) The wishes of the child's de facto custodian.**
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.**
- (3) The intent of the child's parent in placing the child with the de facto custodian.**
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent seeking custody to:**
  - (A) seek employment;**
  - (B) work; or**
  - (C) attend school.**

**(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.**

**(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.**



**(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.**

SECTION 4. IC 31-14-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. The court may not modify a child custody order unless:

- (1) modification is in the best interests of the child; and
- (2) there is a substantial change in one (1) or more of the factors that the court may consider under section 2 **and, if applicable, section 2.5** of this chapter.

SECTION 5. IC 31-14-13-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. In a proceeding for a custody modification, the court may not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described in section 2 **and, if applicable, section 2.5** of this chapter.

SECTION 6. IC 31-14-13-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) If ~~either~~ **any** party to a custody order applies for a passport for the child, the party who applies for the child's passport shall do the following not less than ten (10) days before applying for the child's passport:

- (1) File a notice of the passport application with the clerk of the court that issued the custody order.
- (2) Send a copy of the notice to the other party.

(b) The parties may jointly agree in writing to waive the requirements of subsection (a).

SECTION 7. IC 31-17-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. The court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:

- (1) The age and sex of the child.
- (2) The wishes of the child's parent or parents.
- (3) The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- (4) The interaction and interrelationship of the child with:
  - (A) the child's parent or parents;
  - (B) the child's sibling; and
  - (C) any other person who may significantly affect the child's best interests.



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- (5) The child's adjustment to the child's:
  - (A) home;
  - (B) school; and
  - (C) community.
- (6) The mental and physical health of all individuals involved.
- (7) Evidence of a pattern of domestic violence by either parent.
- (8) Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.**

SECTION 8. IC 31-17-2-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 8.5. (a) This section applies only if the court finds by clear and convincing evidence that the child has been cared for by a de facto custodian.**

**(b) In addition to the factors listed in section 8 of this chapter, the court shall consider the following factors in determining custody:**

- (1) The wishes of the child's de facto custodian.**
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.**
- (3) The intent of the child's parent in placing the child with the de facto custodian.**
- (4) The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to:**
  - (A) seek employment;**
  - (B) work; or**
  - (C) attend school.**

**(c) If a court determines that a child is in the custody of a de facto custodian, the court shall make the de facto custodian a party to the proceeding.**

**(d) The court shall award custody of the child to the child's de facto custodian if the court determines that it is in the best interests of the child.**

**(e) If the court awards custody of the child to the child's de facto custodian, the de facto custodian is considered to have legal custody of the child under Indiana law.**

SECTION 9. IC 31-17-2-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 21. (a) The court may not modify a child custody order unless:**

- (1) the modification is in the best interests of the child; and**



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(2) there is a substantial change in one (1) or more of the factors that the court may consider under section 8 **and, if applicable, section 8.5** of this chapter.

(b) In making its determination, the court shall consider the factors listed under section 8 of this chapter.

(c) The court shall not hear evidence on a matter occurring before the last custody proceeding between the parties unless the matter relates to a change in the factors relating to the best interests of the child as described by section 8 **and, if applicable, section 8.5** of this chapter.

SECTION 10. IC 31-17-2-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) If an individual who has been awarded custody of a child under this chapter intends to move to a residence:

- (1) other than a residence specified in the custody order; and
- (2) that is outside Indiana or at least one hundred (100) miles from the individual's county of residence;

the individual must file a notice of the intent to move with the clerk of the court that issued the custody order and send a copy of the notice to ~~the~~ a parent who was not awarded custody and who has been granted visitation rights under IC 31-17-4 (or IC 31-1-11.5-24 before its repeal).

(b) Upon request of either party, the court shall set the matter for a hearing for the purposes of reviewing and modifying, if appropriate, the custody, visitation, and support orders. The court shall take into account the following in determining whether to modify the custody, visitation, and support orders:

- (1) The distance involved in the proposed change of residence.
- (2) The hardship and expense involved for noncustodial parents to exercise visitation rights.

(c) Except in cases of extreme hardship, the court may not award attorney's fees.

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